

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5325 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI NAVINCHANDRA FAKIRCHAND CHAMPANERI
VERSUS
DY. DIST. DEV. OFFICER & ORS.

Appearance:

MS NANDINI JOSHI for Petitioner
MR DC DAVE for Respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:16/09/1999

C.A.V. JUDGMENT

#. The petitioner, a junior clerk of Valsad District Panchayat, by this writ petition under Article 226 of the

Constitution of India, is praying for directions to the respondents to follow the directions given by the Panchayat Minister under the order dated 20.9.97, to reinstate the petitioner back in services on the original post as held by the Panchayat Minister that the circumstances pointed out by petitioner are exceptional and just. It has next been prayed that the order dated 8.9.93 under which the resignation of the petitioner was accepted be held to be illegal, ultra vires and bad in law. Prayer has also been made for interim relief.

#. The facts of the case, in brief, are that the petitioner was appointed on 3.6.81 as a junior clerk in the office of District Panchayat, Valsad, at Valsad. On 29.4.91, the petitioner submitted his resignation. It is the case of petitioner that resignation submitted by him was never accepted and the petitioner was not informed regarding the same. Vide letter dated 27th April 1992, the petitioner withdrew his resignation pointing out interalia that because of some family circumstances and frequent transfers, he tendered resignation, however, the same was done under mental pressure and that he prays for withdrawal of the same. Vide memo dated 18th December 1992, the petitioner was given a chargesheet regarding unauthorised absence from work and not reporting for duty at the place of his transfer. Departmental inquiry was completed on 17th July 1993. The District Development Officer sent the inquiry report to the petitioner and proposed penalty of reducing him in the rank of lower pay-scale and called upon him to show cause against the proposed penalty. On 29th July 1993, he gave reply to the show cause notice and explained the circumstances under which he remained absent from duties. On 8.9.93, the Deputy District Development Officer imposed penalty of censure on the petitioner. On the same day, certain communication came to be given to the petitioner under which it is stated that resignation submitted by him is accepted with effect from 29th May 1991. Against this order of acceptance of resignation, the petitioner preferred appeal to the District Development Officer in which twofold contentions were raised, namely, that there is no question of resignation from retrospective effect more so when the petitioner has already withdrawn the same. The appeal of the petitioner came to be decided by the District Development Officer on 8.12.93. The petitioner filed Special Civil Application No.338 of 1993 before this Court challenging the order passed by respondent accepting his resignation. That Special Civil Application came to be decided on 17.11.94 and the matter has been sent for consideration to the respondents for withdrawal of his resignation. The District Development

Officer decided this matter on 9.12.94 and held that the petitioner cannot be permitted to withdraw his resignation. Then second litigation has been brought by petitioner before this Court by filing Special Civil Application No.812 of 1995 which came to be decided on 9.4.96. Again, the matter has been remanded back to the authorities and on 24.1.97, the matter has been decided and it is held that the petitioner has failed to make out any exceptional ground justifying his action of withdrawal of resignation. The petitioner this time approached to the Minister of Panchayats by filing application on 2.9.97. The Panchayat Minister on 20th September 1997 directed the Addl. Chief Secretary, Panchayat Department as well as District Development Officer, Valsad, to take the petitioner back in service. Then comes another communication from the Section Officer, Panchayat, Rural Housing and Rural Development Department dated 20.2.98 whereby the State Government has rejected the representation of the petitioner. Hence this Special Civil Application before this Court.

#. The learned counsel for the petitioner contended that it is a case where there were exceptional grounds with the petitioner which justify withdrawal of his resignation. It has next been contended that earlier this Court has given directions twice to the respondents to consider his application for withdrawal of resignation but in a cursory manner, those applications were considered and the same have been decided. Contention has also been raised that the State Government has committed serious error in rejecting the representation of the petitioner.

#. On the other hand, the learned counsel for the respondents supported the order passed by the respondents.

#. The facts are not in dispute that the petitioner submitted his resignation on 29th April 1991 and after expiry of period of notice, he has also relieved himself from services. Rule 33A of the Bombay Civil Service Rules, 1959 (hereinafter referred to as the 'Rules, 1959'), provides that a Government servant may at any time resign from the services of the State by giving a notice of one month in writing to the appointing authority, but if it is not accepted before the expiry of period of notice for resignation to be given by such servant under sub-rule (1), it shall be deemed to have become effective on the date of expiry of such period unless the Government servant is informed, before such date, that his resignation has been rejected and of the

reasons for such rejection. Sub-rule (5) of Rule 33A of the Rules, 1959, lays down that a notice of resignation from services shall not be permitted to be withdrawn after the resignation has become effective except on exceptional ground or in public interest.

#. In this case though if we go by subsequent facts, i.e. the chargesheet given to the petitioner and the order of penalty of censure imposed, I find that the same would have related to the period earlier to 29th April, 1991. That has to be presumed and assumed for the reason that the petitioner very conveniently has not produced on the record of this Special Civil Application the chargesheet. The order of penalty though is there on the record of the Special Civil Application but therefrom also, it is difficult to make out what was the absence period of the petitioner. Be that as it may, the order of respondent dated 8.9.93 accepting resignation of the petitioner from 29th May 1991 is of no substance or any significance. Rule 33A makes very specific provision for deemed acceptance of resignation on the date of expiry of notice period. It is a legal fiction which is there in the statute and it has to be given its fullest effect. It is not the case of petitioner that before the expiry of notice period, he withdrew resignation. Application for withdrawing resignation was submitted by petitioner on 27th April, 1992, i.e. near about one year of submitting the application. It is also not the case of the petitioner that resignation application was rejected before the expiry of period of notice. So the case of the petitioner clearly falls under sub-clause(2) of Section 33A of the Rules, 1959, and resignation of the petitioner shall be deemed to have been accepted from 29th May 1991. Sub-clause (5) of the Rule aforesaid though empowers the competent authority to permit the petitioner to withdraw his resignation after it has become effective, but it is permissible only where the petitioner has made out an exceptional ground or where it is considered to be in the public interest. His case is that his case is of exceptional ground and as such, he should have been permitted by respondent to withdraw his resignation.

#. Now I may advert to the ground taken by petitioner that for the exceptional grounds the petitioner should have been permitted to withdraw his resignation. Though sub-clause (5) of Rule 33A of the Rules, 1959, nowhere gives out what are the exceptional grounds on which resignation can be permitted to be withdrawn by Government servant, so each case has to be considered on its own facts. However, only in case where the competent

authority is satisfied on the material produced that the employee has made out a case of exceptional ground then only he can be permitted to withdraw his resignation. In this case, the petitioner has utterly failed to make out any case of exceptional ground which justifies his request and makes it obligatory for the respondent to permit him to withdraw his resignation. He submitted his application for withdrawal of his resignation on 27th April, 1992, i.e. after one year of tendering resignation. What were exceptional grounds given out by the petitioner in the application was only relevant and the first hand the ground given. The petitioner very conveniently has withheld this document from this Court. On the record of this Special Civil Application, the petitioner has not produced a copy of the said application. The petitioner, in the Special Civil Application said that because of the petitioner's family circumstances, he has earlier given resignation. He has further given out that an employee has a right to withdraw resignation at any time before it is accepted or it becomes effective by efflux of time as provided by rules. Then he has come up with legal proposition that employees are entitled to withdraw resignation before the appointing authority has accepted the same or deemed to be effective by lapse of time. Then he made reference to certain decisions of this Court. This is only in sum and substance the ground given by the petitioner in support of his application for withdrawal of resignation. If we go by the proceedings of the departmental inquiry, I find that the petitioner has not complied with lawful orders of transfer made by the superior officer. He has said that as his father was suffering from Cancer and there was some problem of health of mother, he has not carried out that order. Even if his father was suffering from Cancer though there is no material on record produced by the petitioner, I fail to see how it has any relevance to his transfer. It is not the case where the petitioner is posted at a place where there is Cancer hospital or facilities available for treatment of Cancer. He should have taken his father with him. Similar is the case with mother also. This type of grounds can be given or concocted or manufactured conveniently by the employees like petitioner, who if we go by the substance of the matter, is an indisciplined person having no respect for lawful orders of the superior officers and above that he has no respect for law. The petitioner submitted resignation on 29th April 1991 and thereafter he applied for withdrawal on 27th April 1992. This legal proposition raised is not tenable as under sub-rule 3 of Rule 33A of the Rules, 1959, this resignation stood accepted by legal fiction on 28th May 1991. So it is not

his absolute right to withdraw the same as it stood accepted. Acceptance of resignation by appointing authority is normally an order but where there is a legal fiction created for deemed acceptance of the same that provisions has to be applied. It applies to his case and rightly it is applied. Exceptional ground is not made out by the petitioner which justifies to grant him permission to withdraw his resignation. At the cost of repetition, it is to be stated that the petitioner has failed to make out any exceptional ground in this case. It is a simple case where the petitioner was not interested to go outside. He was interested to remain only at his own place and that is the reason that he has given his resignation. Afterwards it appears that he should have managed politically for his posting at Valsad and which has prompted him to file application for withdrawal of his resignation. If on such grounds resignations are allowed to be withdrawn, then it will create not only bad precedent, but the employees will indulge in manipulating things. They will be indisciplined and it will be difficult to maintain discipline in service. These matters are to be taken seriously and not lightly. In case liberally these matters are being taken, then the very purpose of making Rules, one of the purpose of which is to maintain discipline in service, will become nugatory. It is a case where the petitioner has failed to make out any case which calls for interference of this Court with the order passed by the Deputy District Development Officer, Valsad, as well as the State Government. Both the authorities have rightly not taken it to be a case of exceptional ground and rightly declined to permit the petitioner to withdraw his resignation. The decision on which reliance has been placed by learned counsel for the petitioner is not applicable to the facts of the present case.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

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[sunil]